

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LANA R. WESTROPE and DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, Midwest City, OK

*Docket No. 97-2063; Submitted on the Record;
Issued September 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b); and (2) whether the Office abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in this appeal and finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b) and did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On May 31, 1984 appellant, then a 27-year-old pneudrolic mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 24, 1984 she fractured her left knee and experienced back problems. Appellant stopped work on May 24, 1984.

The Office accepted appellant's claim for a contusion of the left knee, lumbar strain and depression.

The employing establishment offered appellant the position of tools and parts attendant. On April 24, 1995 appellant rejected the employing establishment's job offer.

By letter dated July 18, 1995, the Office advised appellant that the offered position was suitable for her work capabilities. The Office also advised appellant that she had 30 days in which to accept the offered position or to provide an explanation of the reasons for refusing the job along with relevant medical reports supportive of the refusal. The Office further advised appellant of the penalties for refusing an offer of suitable work under section 8106 of the Federal Employees' Compensation Act. In an August 15, 1995 letter, appellant stated that her injury prevented her from prolonged standing, walking, sitting, bending and stooping.

By letter dated August 25, 1995, the Office advised appellant that her reason for refusing the offered position of tools and parts attendant was not justified. The Office then advised appellant that she had to accept the offered position within 15 days. The Office again advised appellant about the penalties for refusing an offer of suitable work under section 8106 of the Act. Appellant did not respond.

By decision dated October 4, 1995, the Office terminated appellant's compensation effective October 4, 1995 on the grounds that appellant refused suitable work. In an October 1, 1996 letter, appellant, through her representative, requested an oral hearing before an Office representative. Appellant further requested reconsideration of the Office's October 4, 1995 decision.

By decision dated December 18, 1996, the Office denied appellant's request for an oral hearing as untimely filed. In a January 7, 1997 letter, appellant, through her representative, requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated April 4, 1997, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of a repetitious nature.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Inasmuch as appellant filed her appeal with the Board on May 20, 1997, the only decisions properly before the Board are the Office's December 18, 1996 decision denying appellant's request for an oral hearing as untimely and April 4, 1997 decision denying appellant's request for reconsideration.

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."² As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.³

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8124(b)(1).

³ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁴

In this case, the Office issued its decision terminating appellant's compensation on the grounds that she refused suitable work on October 4, 1995. Subsequently, appellant's request for an oral hearing was postmarked October 1, 1996. Inasmuch as appellant did not request a hearing within 30 days of the Office's October 4, 1995 decision, she is not entitled to a hearing under section 8124 as a matter of right. The Office also exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that she could have her case further considered on reconsideration by submitting relevant medical evidence. Consequently, the Office properly denied appellant's hearing request.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under section 8128(a).

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ meet at least one of these requirements, the Office will deny the application for review without review of the merits of the claim.⁶

In support of her request for reconsideration, appellant submitted an October 17, 1994 medical report of Dr. Thomas C. Howard, an orthopedic surgeon and appellant's treating physician, indicating her physical restrictions which included limited kneeling, standing, bending, twisting, reaching and lifting, and that she should work within a sedentary category. He also indicated that appellant should not be expected to sit more than 30 minutes at a time. Dr. Howard also noted a plan to return appellant to work eight hours per day. Appellant also submitted Dr. Howard's December 20, 1994 medical report revealing that from a medical standpoint, he could not say that appellant was unable to perform the duties that she was asked to perform by the employing establishment. The Board notes that Dr. Howard's October 17 and December 20, 1994 medical reports were previously of record. The Board has held that evidence that repeats or duplicates evidence already in the record has no evidentiary value and does not constitute a basis for reopening a case.⁷

⁴ *Henry Moreno*, 39 ECAB 475 (1988).

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

In further support of her request for reconsideration, appellant submitted Dr. Howard's October 25, 1995 medical treatment note indicating that she was status quo subjectively and objectively and that it was reasonable for her to seek medical retirement. This evidence fails to provide any medical rationale explaining why appellant was unable to perform the duties of the offered position of tools and parts attendant.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office, the Board finds that the Office was not required to review the merits of appellant's claim.⁸

The April 4, 1997 and December 18, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
September 10, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁸ *Nora Favors*, 43 ECAB 403 (1992).